In reply refer
to MULG

U.S. DEPARTMENT OF LABOR
Manpower Administration
Washington, D.C. 20210

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UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 1276

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

SUBJECT: Claimants in Training

REFERENCES: Sections 3304(a)(8) and 3304(a)(9)(A), FUTA; Section 111(a), Title I, CETA

PURPOSE: To inform State agencies of interpretations of sections 3304(a)(8) and 3304(a)(9)(A), Federal Unemployment Tax Act, and Section 111(a), Title I, Comprehensive Employment and Training Act of 1973 (P.L. 93-203), as they relate to claimants in training.

Section 3304(a)(8), FUTA, requires a State law, as a condition of certification for the allowance of a credit against the Federal unemployment tax, to provide that:

> "compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work)".

The expressed intent of Congress in enacting section 3304(a)(8) was "to act to remove the impediments to training which remain in our unemployment insurance system." (House Report No. 91-612 on H.R. 14705, p. 17.)

Section 3304(a)(9)(A), FUTA, requires a State law, as a condition of certification for the allowance of a credit against the Federal unemployment tax, to provide that:

> "compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United

> States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation."

The expressed intent of Congress in enacting section 3304 (a) (9) (A) was to remove provisions "which reduce the benefits, or otherwise penalize workers who reside elsewhere than in the State in which they worked and earned their right to benefits," because such provisions "are not only inequitable to the individual claimant and injurious to the proper functioning of the unemployment insurance system but inhibit among workers a very desirable mobility which is important to our economy." (House Report No. 91-612 on H.R. 14705, p. 17.)

Section 111 (a), Title I, of the Comprehensive Employment and Training Act of 1973 provides for basic and augmented allowances for individuals receiving training or education under Title I for which no wages are payable. Section 111 (a) provides also for additional sums for special circumstances such as exceptional expenses incurred by trainees, including but not limited to meal and travel allowances. Under section 111 (a), basic allowances shall be paid at a rate prescribed by the Secretary,

> "which when added to amounts received by the trainee in the form of unemployment compensation payments"

shall equal the minimum wage for a 40-hour workweek under the State or local law or the minimum wage under section 6 (a) (1) of the Fair Labor Standards Act, whichever is higher (plus $5 for each dependent after the first two, up to a maximum of $20).

Part A of this letter deals with claimants taking training under any public or private program, Part B with claimants taking CETA training.

(A) CLAIMANTS UNDERTAKING TRAINING UNDER ANY PUBLIC OR PRIVATE PROGRAM

(1) Agency Approval of Training

Section 3304(a)(8) prohibits denial of unemployment benefits to a claimant undertaking training "with the approval of the State agency." It is clear that the prohibition extends to any vocational or other training approved for the claimant by the State agency. The "approval of the State agency" contemplated in section 3304(a)(8) encompasses not only situations in which the agency specifically grants approval of training which a claimant takes the initiative in proposing, but also a State agency's referral of a claimant to training, selecting the claimant for specific training, or otherwise assisting the claimant to enroll in training. The approval of the State agency includes "approval" as noted herein either by the State unemployment insurance office, the State employment service, or any other component of the State employment security agency.

Section 3304(a)(8) is further interpreted as contemplating that each State agency will apply reasonable criteria for approval of training. Criteria which substantially follow CETA guidelines or those suggested in BES No. U-212, Unemployment Insurance Legislative Policy, 1962, pages 59 and 60, will meet this requirement.

(2) Effect of Training Allowances and Other Payments on Agency Approval of Training

Section 3304(a)(8) is interpreted as precluding the denial of unemployment benefits to a claimant engaged in training, because the claimant may be eligible for or receive an allowance or other payment from another source in connection with the training.

It follows that approval of training for a claimant may not be denied or withdrawn because the claimant may be eligible for or receive an allowance or other payment in connection with such training.

(3) Deduction of Training Allowances and Other Payments from Unemployment Benefits

(The following discussion concerning deductions from unemployment insurance is not applicable to CETA training because of the provision of section 111(a) of CETA. See Part B of this letter).

Training allowances or other payments which may reasonably be considered to duplicate unemployment benefits may, if the State law so provides, be deducted from unemployment benefits payable to the claimant for any week with respect to which such a payment is made.

A weekly training allowance or other payment in connection with training may be considered to be duplicative of unemployment insurance to the extent that such payment is intended as maintenance or subsistence for the claimant (and dependents, if any) to meet ordinary, nondeferrable living expenses.

In the case of payments to offset the direct costs of training, which are not duplicative of unemployment benefits, the reduction of unemployment benefits by the amount of such payments would be inconsistent with section 3304(a)(8). Payments which are not duplicative of unemployment insurance include payments to cover such costs as tuition, the added expenses of living away from home while in training, and allowances for books or transportation. Such payments are not made for the same purpose as a weekly allowance, and permitting the deduction from unemployment benefits of such payments to a claimant would clearly disadvantage that claimant in relation to a trainee for whom tuition, books, and other direct costs have been paid directly to the facility.

(4) Training Outside the State

A provision which requires that training must be undertaken within the State in order to be approved would discourage a claimant who resides in another State from undertaking training in such other State. In effect, such a provision penalizes workers who reside or file claims elsewhere than in the State in which they worked and earned their benefits.

Since section 3304(a)(9)(A) precludes denial of unemployment benefits to a claimant who resides in or files claims for unemployment benefits in another State, refusal of approval of training solely because the training is conducted in another State would be inconsistent with this requirement and section 3304(a)(8). Thus, the fact that training is conducted in another State, where the claimant resides or files claims for unemployment benefits, may not be the reason for declining approval of the training for the claimant.

(5) Approval of Training for Interstate Claimants

In the case of interstate claims, the authority to approve training rests with the State agency of the liable State.

This does not mean, of course, that the agency of the liable State could not adopt as its own a determination by the State agency of the agent State approving training for a particular claimant, or that the liable State could not delegate such authority to the agent State. Moreover, it is recommended that liable States place as much reliance as possible, in determining whether training for an interstate claimant is to be approved, on the recommendation of the agent State. Since the claimant is located in the agent State and the agent State usually knows his personal situation and that labor market best, the agent State is usually in the best position to judge the approvability of training.

(6) Approval of Training for Combined-Wage Claimants

In the case of combined-wage claims, the authority to approve training rests with the State agency of the paying State. A transferring State will transfer wages and reimburse the paying State as provided in 20 CFR, Part 616, without regard to approval of training for the claimant or whether the trainee is eligible for or receives allowances or other payments with respect to the training. The paying State may not refuse to approve training solely because the claimant has no (or insufficient) covered employment or wages to qualify for benefits in the paying State.

As in the case of interstate claims, the paying State may delegate authority for approval of training to the State agency of the transferring State or other State in which the claimant resides or files claims for unemployment benefits, or the paying State may adopt as its own a determination by the State agency of such other State. For the reasons stated above in regard to interstate claims, we recommend that the paying State place as much reliance as possible on the State agency of such other State with respect to approval of training for the claimant.

(B) CETA TRAINING

The approach in CETA is different from the approach taken in MDTA and under other programs. In CETA the Congress has clearly indicated its intent that unemployment insurance claimants undertaking CETA training shall, if they are otherwise eligible under the State law, continue to receive payments of unemployment benefits while they are taking CETA training. Accordingly, unemployment benefits may not be denied to an otherwise eligible unemployment insurance claimant because the claimant is undertaking CETA training, nor may unemployment benefits be reduced or denied because the claimant is entitled to or is paid a basic or augmented weekly allowance or other sum under section 111(a), CETA.

Further, in order to give full effect to section 111(a) of CETA, a State may not deny unemployment benefits to a claimant in CETA training because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work. This accords with the policy underlying section 3304(a)(8), FUTA, which precludes the denial of unemployment benefits to a claimant in approved training through application of the State law's availability, active search, or refusal of work provisions, and parallels the objective of removing impediments to training in the unemployment insurance system. A contrary result would, we believe, defeat the intent of section 111(a), CETA.

Necessary Changes in State Laws

Those States whose laws contain provisions which are not consistent with the interpretations of the Federal law as stated herein should seek appropriate changes in their laws at the earliest opportunity.

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for Field Direction and Management